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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/800,386 | 03/12/2004 | Takahiro Saito | EHAR0004-D2 | 8854 |
| 23900 | 7590 | 06/30/2005 | EXAMINER | |
| J C PATENTS, INC. 4 VENTURE, SUITE 250 IRVINE, CA 92618 | | | CAPUTO, LISA M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2876 | |

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,386

Applicant(s)

SAITO, TAKAHIRO

Examiner

Lisa M. Caputo

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2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendment

1. Receipt is acknowledged of the amendment filed 4 April 2005.

Declaration under 37 CFR 1.131

2. The affidavit filed on 4 April 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Ackley reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Ackley reference to either a constructive reduction to practice or an actual reduction to practice since the applicant's statements are vague as to diligence. For example, applicant states on page 1, paragraph 4 of the declaration filed 4 April 2005, "As far as I can recall" and "We exchanged opinions..." which are not concrete declarations of an established diligence since applicant is not sure when he says "As far as I can recall" and does not pinpoint specific conversations during a 2 year time period when it is stated that "We exchanged opinions ...while both fulfill other work-related duties".

Although a true English translation of a disclosure is provided, examiner must also obtain a translation in order to ensure consistency of the translation. In addition, the true English translation provided is not a complete disclosure of the instant application since a drawing translation and evidence of conception are not provided in the disclosure.

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 6-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Ackley et al. (U.S. Patent No. 6,375,075, from hereinafter "Ackley").

Ackley teaches a method and apparatus for reading machine-readable symbols including color symbol elements. Regarding claim 6, Ackley teaches an information code (color machine-readable symbol 12) comprising a plurality of bars shown on a product (tag 12 on container 16), following a predetermined pattern of arrangement according to a conventional black and white bar code structure, said bars including at least three types of bars in such a manner that each of said three types of the bars has a reflected wavelength characteristic different from that of other bars among said three types of the bars so that the reflected wavelength characteristic the bars when combined forms a unit of displaying information. More specifically, Ackley teaches that A number of color elements 26-36 form the color symbol 12. For example, the color symbol 12 of FIG. 1 includes blue 26, yellow 28, red 30, green 32, white 34, and red 36 bars. (For ease of presentation, the color of each bar is represented by a letter, where B stands for blue, Y stands for yellow, R stands for red, G stands for green, and W stands for white. In use, the symbol elements 26-36 employ the actual colors, and the letters typically do not appear on the symbol 12.) The particular color machine-readable

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symbol 12 shown in FIG. 1 is not intended to represent any particular symbol from any particular symbology, and the invention is not limited to any particular color symbology or physical aspects of a particular symbology. For example, the symbol 12 can employ fixed width bars, instead of the varying width color bars 26-36 shown in FIG. 1.

Additionally, or alternatively, the symbol 12 can employ geometrical shapes other than bars, such as hexagons, octagons, dots, squares, or arbitrary shapes. Further, the color symbol 12 can employ fewer or greater number of colors, or different colors than those shown and discussed (see Figure 1, col 2 line 58 to col 3 line 10).

Regarding claim 7, Ackley teaches that the three types of bars include a red bar 36, a green bar 32, and a blue bar 26 (see Figure 1, col 2, lines 59-60).

Regarding claim 8, Ackley teaches that the three types of bars include a white color bar 34 and another bar with color selected from a group of red, blue, and green bars. In addition, Ackley teaches that the color symbol 12 can employ different colors than those shown and discussed, which includes the conventional black color (see Figure 1, col 2 line 58 to col 3 line 10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ackley in view of Yoshinaga (U.S. Patent No. 6,073,842). The teachings of Ackley have been discussed above.

Regarding claims 9-14, Ackley fails to specifically enumerate the use of different conventional barcodes (i.e. JAN, ITF, NW-7).

Yoshinaga discloses that examples of the normal bar code are shown in FIGS. 8A, 8B, 8C and 8D. A bar code shown in FIG. 8A is a JAN type bar code which is mainly used in the food trade. A bar code shown in FIG. 8B is an NW-7 type bar code which is mainly used in the apparel trade. A bar code shown in FIG. 8C is an ITF type bar code which is mainly used in the distribution trade. A bar code shown in FIG. 8D is a CODE 39 type bar code, which is mainly used for industrial products (see Figures 8A-8D, col 3, lines 43-50). Hence, these codes are conventional and well-known in the art to consist of 13 modules, each of which consists of 7 bars and to contain a plurality of information (i.e. a national number, manufacturer number, etc.). See also the "Description of the Related Art" section of the specification of the instant application on pages 1-2, which teaches about the conventional properties of these codes.

In view of the teaching of Yoshinaga, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ one of the conventional codes because these codes are well known to be efficient to store and be able to display data. In addition, since they are conventional, there is a standard that is upheld and the codes are able to be read by conventional, standardized readers which is favorable because the codes are more easily and universally read.

Response to Arguments

5. Applicant's arguments filed 4 April 2005 have been fully considered but they are not persuasive.

Applicant did not argue the validity of the reference as prior art since an affidavit was filed in an attempt to antedate the reference. Since the affidavit is ineffective to overcome the reference, the rejection stands.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ***Lisa M. Caputo*** whose telephone number is **(571) 272-2388**. The examiner can normally be reached between the hours of 8:30AM to 5:00PM Monday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached at **(571) 272-2398**. The fax phone number for this Group is (703) 872-9306.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [lisa.caputo@uspto.gov].

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All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


LMC

June 23, 2005



DIANE I. LEE
PRIMARY EXAMINER